



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

450 N STREET, SACRAMENTO, CALIFORNIA  
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0043  
TELEPHONE (916) 445-1441  
FAX (916) 445-2388  
www.boe.ca.gov

April 21, 2006

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Dear Interested Party:

Enclosed is the *Initial Discussion Paper* regarding the application of tax to sales by florists as provided in Regulation 1571, *Florists*. Discussion regarding proposed amendments to Regulation 1571 is scheduled for the Board's **August 29, 2006 Business Taxes Committee** meeting.

However, before the issue is presented at the Business Taxes Committee meeting, staff would like to provide interested parties an opportunity to discuss the issue and present any suggested changes or comments. Accordingly, a meeting is scheduled in **Room 122 at 10:00 A.M. on May 2, 2006**, at the Board of Equalization; 450 N Street; Sacramento, California. Please note this is a change from the date noted on the Business Taxes Committee calendar distributed earlier this month.

If you are unable to attend the meeting but would like to provide input for discussion at the meeting, please feel free to write to me at the above address or send a fax to (916) 322-4530 before the May 2 meeting. If you are aware of other persons that may be interested in attending the meeting or presenting their comments, please feel free to provide them with a copy of the enclosed material and extend an invitation to the meeting. If you plan to attend the meeting on May 2, or would like to participate via teleconference, I would appreciate it if you would let staff know by contacting Lynn Whitaker at (916) 324-8483 or by e-mail at [Lynn.Whitaker@boe.ca.gov](mailto:Lynn.Whitaker@boe.ca.gov) prior to April 25, 2006. This will allow staff to make alternative arrangements should the expected attendance exceed the maximum capacity of Room 122 and to arrange for teleconferencing. In addition, please let Ms. Whitaker know if you wish to have future correspondence, including the second discussion paper and all attachments, sent to your e-mail address rather than to your mailing address.

Whether or not you are able to attend the above interested parties' meeting, please keep in mind that the due date for interested parties to provide written responses to staff's analysis is **May 19, 2006**. Please be aware that a copy of the material you submit may be provided to other interested parties. Therefore, please ensure your comments do not contain confidential information.

If you are interested in other topics to be considered by the Business Taxes Committee, you may refer to the "Business Taxes Committee" page on the Board's Internet web site (<http://www.boe.ca.gov/meetings/btcommittee.htm>) for copies of Committee discussion or issue papers, minutes, a procedures manual and calendars arranged according to subject matter and by month.

E-file now, find out how . . . [www.boe.ca.gov](http://www.boe.ca.gov)



Thank you for your consideration. I look forward to your comments and suggestions. Should you have any questions, please feel free to contact Ms. Leila Khabbaz, Supervisor, Business Taxes Committee and Training Section at (916) 322-5271.

Sincerely,

Jeffrey L. McGuire  
Chief, Tax Policy Division  
Sales and Use Tax Department

JLM:llw  
Enclosures

cc: (all with enclosures)  
Honorable John Chiang, Chair  
Honorable Claude Parrish, Vice Chairman  
Ms. Betty T. Yee, Acting Member, First District (MIC 71)  
Honorable Bill Leonard, Member, Second District (MIC 78)  
Honorable Steve Westly, State Controller, C/O Ms. Marcy Jo Mandel (MIC 73)  
Mr. Chris Schutz, Board Member's Office, Fourth District (MIC 72)  
Mr. Neil Shah, Board Member's Office, Third District (via e-mail)  
Mr. Romeo Vinzon, Board Member's Office, Third District (via e-mail)  
Ms. Sylvia Tang, Board Member's Office, First District (via e-mail)  
Mr. Steve Kamp, Board Member's Office, First District (MIC 71)  
Ms. Margaret Pennington, Board Member's Office, Second District (via e-mail)  
Mr. Lee Williams, Board Member's Office, Second District (MIC 78 and via e-mail)  
Mr. Ramon J. Hirsig (MIC 73)  
Ms. Kristine Cazadd (MIC 83)  
Ms. Randie L. Henry (MIC 43)  
Mr. Robert Lambert (MIC 82)  
Mr. Brad Heller (MIC 82)  
Mr. Randy Ferris (MIC 82)  
Ms. Janice Thurston (via e-mail)  
Ms. Jean Ogrod (via e-mail)  
Mr. Jeff Vest (via e-mail)  
Mr. David Levine (MIC 85)  
Mr. Steve Ryan (MIC 85)  
Mr. Todd Gilman (MIC 70)  
Mr. Kenneth Topper (via e-mail)  
Mr. Dave Hayes (MIC 67)  
Mr. Stephen Rudd (via e-mail)  
Mr. Joseph Young (via e-mail)  
Mr. Vic Anderson (MIC 44 and via e-mail )  
Mr. Larry Bergkamp (via e-mail)  
Mr. Geoffrey E. Lyle (MIC 50)  
Ms. Leila Khabbaz (MIC 50)  
Ms. Lynn Whitaker (MIC 50)

# INITIAL DISCUSSION PAPER

## **Proposed revisions to Regulation 1571, *Florists*, to clarify the application of tax to sales by florists**

### **Issue**

Should Regulation 1571, *Florists*, be amended to clarify the application of tax to sales by florists whose transactions do not involve a reciprocal agreement with a floral delivery association?

### **Background**

Regulation 1571, *Florists*, was first adopted as Ruling 42 in 1933 to explain the application of tax to sales of floral arrangements where one florist accepts the order and instructs another florist to make the delivery pursuant to a reciprocal agreement with a floral delivery association. The regulation was amended in 1971 to clarify charges included in the measure of tax, but the manner in which tax applies has remained the same since 1933. A copy of Regulation 1571 is attached as Exhibit 1.

When a purchaser places an order with a florist and requests that the flowers be delivered to a recipient outside the florist's delivery area, the florist taking the order will typically send the order to a florist near the recipient for fulfillment and delivery. Most florists are members of floral delivery associations (e.g., FTD, Teleflora) and the ordering, fulfillment, and delivery of flowers are often completed through affiliated members of these networks. However, in the past few years, some Internet based florists have developed their own distribution system to fill and deliver flower orders.

Under discussion are orders taken by California florists for the delivery of flowers outside California. Under the current provisions of Regulation 1571, tax applies to amounts charged by California florists for such orders even though another florist fills the order and makes the delivery outside California. Tax does not apply to amounts received by California florists who make deliveries in California pursuant to instructions received from other florists.

The application of tax to out-of-state sales by florists was discussed in two separate cases heard by the Board in March 2002 and February 2006, which were decided in favor of the taxpayers. Both cases involved taxpayers who were located in California, but sold flowers exclusively through their Web sites and toll-free numbers. In the first case, the taxpayer did not use a floral delivery association to fulfill and deliver orders. Instead, the taxpayer had orders filled by packers or growers (who were not members of a floral delivery association) and shipped by common carrier. In the second case, the taxpayer used a floral delivery association; however, the taxpayer was a "send only" florist. A "send only" florist is a florist that can send orders to other florists for fulfillment and delivery pursuant to a nonreciprocal agreement with a floral delivery association, and thus does not receive, fill, or deliver orders for other florists.

In both cases, the taxpayers pointed out that the current rules for florists were developed for florists who operate traditional flower shops and participate in reciprocal agreements with other members of floral delivery associations. Since these taxpayers did not fit the reciprocal-delivery business model that Regulation 1571 was promulgated to address, these Internet-based retailers

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of flowers argued that they should not be considered “florists” for purposes of applying Regulation 1571. Rather, the taxpayers believed that their sales should be reported under the standard rules for out-of-state sales provided in Regulation 1620, *Interstate and Foreign Commerce*.

Under the provisions of Regulation 1620, a sale of tangible personal property is regarded as occurring outside California and not being subject to California sales tax, if the order for such property is received by a California retailer who instructs an out-of-state retailer to deliver the property outside California.

The Business Taxes Committee (BTC) is scheduled to discuss this issue at its meeting on August 29, 2006.

#### **Discussion – Excluding certain florists from the provisions of Regulation 1571**

Should florists whose transactions do not involve reciprocal agreements with floral delivery associations be excluded from the provisions of Regulation 1571? As discussed above, the current rules for taxing sales by florists were developed for traditional florist transactions.

In the traditional florist transaction, customers who want flowers delivered call or go to their local California flower shop and order flowers for delivery. If the delivery location is outside the local flower shop’s delivery area, the florist forwards the order to a member of their floral delivery association. In turn, the California flower shop receives orders from other association members to fill and deliver orders to recipients within its delivery area. These floral delivery association members benefit from this reciprocal-delivery arrangement, and the special rules designed for these traditional florists have worked well for over 70 years.

The businesses under discussion do not participate in reciprocal-delivery transactions with other association members. Thus, they do not benefit from the provisions of Regulation 1571, and their customers may be subjected to unintended consequences. Taking orders almost exclusively through the Internet, these businesses have either bypassed the florist delivery associations completely, or only partially participated as send only florists, so that the provisions of Regulations 1571 regarding orders received from other florists have no application to these businesses. In addition, the physical location of an Internet florist may have little or no impact on its pool of customers, as does the location of a traditional flower shop. Some of the rationale behind the special taxing rules for florists is lost on Internet transactions because the customers probably do not know they are placing an order with a California florist. Understandably, those customers might question why a transaction was subject to California sales tax, especially if neither the ordering customer nor the flower recipient was located in California.

## **INITIAL DISCUSSION PAPER**

### **Proposed revisions to Regulation 1571, *Florists*, to clarify the application of tax to sales by florists**

#### **Discussion – effect on other states**

What would be the effect of amending Regulation 1571 to exclude California florists whose transactions do not involve reciprocal agreements with floral delivery associations? Those florists would continue to report tax on sales delivered in California, however sales to points outside of California would be considered sales in interstate and foreign commerce and not subject to California tax.

Currently, when flowers are sold through a florist delivery association, all other states follow rules similar to Regulation 1571. Thus, other states do not tax the order received from another florist – whether the order originates from a florist within the same state or outside the state. If the Board amends Regulation 1571 so that it does not apply to orders received by California florists who do not have reciprocal agreements with a floral delivery association, the orders may escape taxation altogether when such orders are sent to out-of-state florists for fulfillment and delivery.

#### **Summary**

Increased Internet sales have changed the business structure of some florists in California. Under discussion is whether this new type of florist should be subject to the rules developed for traditional florists. Interested parties are welcome to submit comments or suggestions on this issue and are invited to participate in the interested parties meeting scheduled for May 2, 2006, in Sacramento.

Prepared by the Tax Policy Division, Sales and Use Tax Department

Current as of 04/20/06

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**REGULATION 1571. FLORISTS.**

*Reference:* Section 6012, Revenue and Taxation Code.

Tax applies to amounts charged by a florist to his customers for the delivery of flowers, wreaths, etc., to points within California, even though he instructs another florist to make the delivery, but in such case tax does not apply to amounts received by the florist making the delivery.

Tax applies to amounts charged by florists who receive orders for the delivery of flowers, wreaths, etc., to points outside this state and instruct florists outside this state to make the delivery.

The measure of tax includes charges made for telegrams or telephone calls whether or not the charges are separately stated. A "relay" or other service charge, made in addition to the charge for the telegram or telephone call, must also be included in the measure of tax.

Tax does not apply to amounts received by California florists who make deliveries in this state pursuant to instructions received from florists outside this state.